

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Bruce Bernard/797-1240 by Herb Hyman/797-1016

SUBJECT: Resolution

AFFECTED DISTRICT: n/a

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CPZ ARCHITECTS, INC. FOR MISCELLANEOUS ARCHITECTURAL SERVICES.

REPORT IN BRIEF: The Town solicited proposals for firms to provide continuing miscellaneous architectural services. The Town Council approved the selection of CPZ Architects, Inc. as one of two firms that the Town would be entering into contracts with by Resolution R-2004-212. Staff negotiated with CPZ Architects, Inc. as directed by Resolution R-2004-212 and presents the attached contract for execution by the Mayor. This master contract will establish an hourly rate schedule that will be the basis of pricing for all projects. As work assignments are identified, the Public Works/Capital Projects Director or his designee will negotiate a Memorandum of Understanding defining the scope of work to be completed and the price for this work. All Memorandums of Understanding will be executed administratively. The initial term of this contract is two (2) years with options to extend the contract for an additional two (2) year term by mutual agreement of the parties. Contract extensions, if appropriate will be handled administratively by staff subject to budgetary approval by Town Council.

PREVIOUS ACTIONS: Resolution R-2004-212.

CONCURRENCES: This contract was negotiated by the Procurement Manager and the Public Works/Capital Projects Director. The contract has been reviewed by the Town Attorney's office.

FISCAL IMPACT:

Has request been budgeted? yes
If yes, expected cost: dependent on the number of work assignments
Account Name: Various Capital Improvement Program Accounts
Additional Comments: Not applicable

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):
Two (2) copies of master agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CPZ ARCHITECTS, INC. FOR MISCELLANEOUS ARCHITECTURAL SERVICES.

WHEREAS, the Town Council approved the selection of CPZ Architects, Inc. to perform miscellaneous architectural services by Resolution R-2004-212; and

WHEREAS, staff negotiated a master contract with CPZ Architects, Inc. which establishes hourly rates to be charged for all projects; and

WHEREAS, as the need arises, CPZ Architects, Inc. will be required to enter into a Memorandum of Understanding with the Town to authorize the work for each described scope of services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with CPZ Architects, Inc. for miscellaneous architectural services which is attached hereto and identified as Attachment "A".

SECTION 2. The Town Council of the Town of Davie does hereby authorize the appropriate staff members to approve the Memorandum of Understanding for services which are derived from the rate structure of this master agreement and limited by the provisions of "continuing services" as defined by F.S.S. 287.055.

SECTION 3 . The initial term is two (2) years with an option to extend the contract for an additional two (2) year term by mutual agreement of the parties. Contract extensions, if appropriate, will be handled administratively by staff subject to budgetary approval by the Town Council.

SECTION 4. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004

**AGREEMENT BETWEEN THE TOWN OF DAVIE
AND _____
FOR MISCELLANEOUS ARCHITECTURAL SERVICES**

THIS AGREEMENT, made and entered into the ____ day of ____, 2004, by and between:

TOWN OF DAVIE, FLORIDA
a municipal corporation
6591 Orange Drive
Davie, Florida 33314

(hereinafter referred to as "TOWN") and

(hereafter referred to as "CORPORATION")

WHEREAS, the Town issued a Request for Proposal (B-04-80) for Miscellaneous Architectural Services; and

WHEREAS, the intent of the Town staff is to recommend multiple awards to the Town Council and establish a list of qualified firms; and

WHEREAS, the recommended firms will provide professional services for projects that do not exceed \$1,000,000.00 in basic construction cost or \$50,000.00 for a planning or study activity pursuant to the "continuing services" Section 287.055, Florida Statutes; and

WHEREAS, the Town Council approved staff's recommendation by Resolution R-2004-212 and authorized the Town Administrator or his designee to negotiate contracts for such services;

NOW, THEREFORE, in consideration of the benefits provided by CORPORATION to the citizens of Davie and the covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

Section 1.

1.01 The above recitals are true and correct and are incorporated herein.

Section 2. TERM

2.01 This Agreement shall be effective upon the approval of the Town Council and shall terminate two (2) years from that date. However, either party may terminate this Agreement by providing a thirty (30) calendar days written notice. The TOWN shall have the option to renew this Agreement for two (2) additional one (1) year terms upon the same terms, conditions and limitations imposed hereby.

Section 3. SCOPE OF SERVICES

3.01 CORPORATION acknowledges that its firm is on a list of architectural firms to be considered by the Town to provide professional services for projects that do not exceed \$1,000,000.00 in basic construction cost or \$50,000.00 for a planning or study activity pursuant to the "continuing services" Section 287.055, Florida Statutes.

3.02 CORPORATION will conduct services as outlined in the TOWN'S RFP B-04-80. CORPORATION will be required to provide experienced professional service in all architectural/engineering disciplines.

3.03 CORPORATION acknowledges that from time to time TOWN will contact CORPORATION to perform a specified scope of work. All work to be performed by CORPORATION must be authorized by the TOWN, with such authorization containing additional information, terms and conditions related to the specific project.

3.04 CORPORATION will enter into a Memorandum of Understanding or Scope of Services letter with TOWN for the "Authorization of Work" for each required scope of service to be completed by CORPORATION.

Section 4. CONSIDERATION

4.01 Should TOWN request services from CORPORATION at an hourly rate, such services shall be provided in accordance with the price schedule, which is inclusive of all fees and expenses, including travel and other direct expenses. Said price schedule is attached hereto and incorporated herein as Exhibit "A". CORPORATION may submit a revised Exhibit "A" for consideration by TOWN during the term of the Agreement; however, CORPORATION may only submit a revision once during any twelve month period.

4.02 Should TOWN request services from CORPORATION, as a fixed fee, services shall be provided in accordance with an agreed upon lump sum fixed fee which will be included in the Memorandum of Understanding or Scope of Services letter. Those fixed fees shall be inclusive of all fees and expenses including travel and other direct expenses.

4.03 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the CORPORATION'S services and include expenses incurred by the CORPORATION and CORPORATION'S employees and consultants directly related to the Project, as identified in the following Clauses:

(a) reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service. However, reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service for the purpose of the CORPORATION'S internal checking and coordination within his / her firm or checking and coordination with their consultants shall not be reimbursable expenses.:

(b) renderings, models, and mock-ups requested by the TOWN:

(c) out of town travel and subsistence in connection with the project, only if approved in advance by the TOWN in writing

(d) geotechnical testing and soils reports, if authorized by the TOWN

(e) other similar direct Project-related expenditures as approved by the TOWN in advance.

(f) e-mails, FAX transmittals and telephone communications with the TOWN for the purpose of communicating regarding the work performed under this contract shall not be reimbursable.

4.04 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates shall be submitted to the TOWN or the TOWN'S authorized representative along with billings for same.

4.05 Payments are due and payable thirty (30) days from the date of CORPORATION'S invoice. Payments shall be made per the requirements of the Florida Prompt Payment Act.

The CORPORATION may also choose to accept the TOWN'S Visa credit card for payment. This type of payment may be made immediately following acceptance by the TOWN.

Section 5. DUTIES AND RESPONSIBILITIES OF TOWN

5.01 Timely review and comment on all work product submitted by CORPORATION and schedule all required meetings on a timely basis.

5.02 Other assistance as may be required by CORPORATION to complete required work authorized by TOWN.

Section 6. INSURANCE

6.01 Prior to commencing work, the CORPORATION shall provide TOWN with certified copies of all insurance policies providing coverage as required.

6.02 The CORPORATION shall secure and maintain, at its own expense, and keep in effect during the full period of the agreement a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(a) **Professional Liability Insurance** in an amount not less than \$1,000,000.00 per occurrence.

(b) **Worker's Compensation and Employer's Liability Insurance** for all employees of the CORPORATION engaged in work under the Agreement in accordance with the laws of the State of Florida. The CORPORATION shall agree to be responsible for the employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

(c) **Comprehensive General Liability Insurance** with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence. Coverage shall specifically include the following minimum limits not less than those required for Bodily Injury Liability and Property Damage:

\$500,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence:

- 1) Premises and Operations;
- 2) Independent Contractors;
- 3) Products and Completed Operations;
- 4) Broad Form Property Damage;
- 5) Broad Form Contractual Coverage applicable to the Contract and specifically confirming the indemnification and hold harmless agreement in the Contract;
- 6) Personal Injury Coverage with employment and contractual exclusions removed and deleted; and
- 7) Explosion, collapse, underground coverage (X - C - U)

(d) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the CORPORATION in the performance of the work with the following minimum limits of liability:

\$1,000,000.00 Combined Single Limit, Bodily Injury and Property Damage Liability per occurrence.

6.03 ALL LIABILITY INSURANCE POLICIES EXCEPT PROFESSIONAL LIABILITY INSURANCE SHALL SPECIFICALLY PROVIDE THAT THE TOWN OF DAVIE IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF THE CORPORATION UNDER THE AGREEMENT. Professional Liability Insurance certificate shall list "Town of Davie" as "Certificate Holder". INSURANCE Companies selected must be acceptable to TOWN. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to TOWN by certified mail.

6.04 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide:

Financial Stability B+ to A+

6.05 The CORPORATION is required to submit a list of claims presently outstanding against their professional liability coverage. This information must be provided by and signed by the agent of the insurance carrier. If no outstanding claims exist, a statement of this fact must be provided by and signed by the agent of the insurance carrier.

Section 7. INDEMNIFICATION

7.01 GENERAL INDEMNIFICATION: The CORPORATION agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Town, its officers, directors and employees (Collectively, Town) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the CORPORATION'S negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the CORPORATION is legally liable. Nothing in this agreement shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28. Nothing in the Agreement shall be construed to benefit or grant any claim or cause of action to any third party.

7.02 PATENT AND COPYRIGHT INDEMNIFICATION: The CORPORATION agrees to indemnify, defend, save and hold harmless the TOWN, its officers, agents and employees, from all claims, damages, losses, liabilities and expenses arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Agreement. Any and all work products produced during the term of this contract by CORPORATION shall be the sole property of the TOWN.

Section 8. TERMINATION AND DEFAULT

8.01 In the event CORPORATION shall default in any of the terms, obligations, restrictions or conditions of the Proposal documents, TOWN shall give written notice by certified mail, return receipt requested to CORPORATION of default and that such default shall be corrected or actions taken to correct such default shall be commenced within ten (10) calendar days thereof. In the event

CORPORATION has failed to correct the conditions of default or the default is not remedied to the satisfaction and approval of TOWN, TOWN shall have all legal remedies available to it, including, but not limited to termination of this Agreement in which case the CORPORATION shall be liable for all procurement and reprourement costs and any and all damages permitted by law arising from the default and breach of this Agreement.

8.02 TOWN shall have the right to terminate the Agreement, without cause, by giving written notice to CORPORATION of such termination and specifying the effective date thereof, at least thirty (30) calendar days prior to the effective date of termination.

Section 9. RECORDS AND AUDIT

9.01 TOWN reserves the right to audit the records of CORPORATION relating to this project at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by TOWN. If required by TOWN, CORPORATION shall agree to submit to an audit by an independent certified public accountant selected by TOWN. CORPORATION shall allow TOWN to inspect, examine and review the records of CORPORATION at any and all times during normal business hours during the term of this Agreement.

Section 10. INDEPENDENT CONTRACTOR

10.01 It is understood and agreed that CORPORATION is and shall remain an independent contractor with respect to the services being performed by CORPORATION pursuant to this Agreement and shall not, for any purpose, be deemed an employee of TOWN.

Section 11. CONFLICT OF INTEREST

11.01 CORPORATION covenants that no person under its employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with TOWN. CORPORATION further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests, on the part of CORPORATION or its employees, must be disclosed in writing to TOWN.

11.02 CORPORATION is aware of the conflict of interest laws of Broward County and the State of Florida, Chapter 112, Florida Statutes (1993), as amended, and agrees that it will fully comply in all respects with the terms of said laws.

11.03 CORPORATION warrants that it has not employed or retained any person employed by TOWN to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay, any public official or person employed by TOWN any fee, commission, percentage, brokerage fee or gift of any kind, contingent upon or resulting from the award of his privilege.

Section 12. ASSIGNMENT

12.01 This is a personal services Agreement whereby TOWN has expressly retained CORPORATION. This Agreement is not assignable or transferable in whole or in part without the prior expressed written consent of the TOWN which consent can be arbitrarily withheld.

Section 13. COMPLIANCE WITH LAWS

13.01 CORPORATION shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida, Town of Davie and of any other public authority which may be applicable to this Agreement.

13.02 CORPORATION'S work product shall comply with all applicable Codes including but not limited to the Florida Building Code, latest edition, the Town of Davie's Land Development Code, and all other applicable Codes and standards.

Section 14. VENUE

14.01 Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, paralegal expenses, interest and court costs incurred by such prevailing party against the losing party including reasonable appellant attorney's fees, interest and taxable costs.

Section 15. GOVERNING LAW

15.01 The validity, construction and effect of this agreement shall be governed by the laws of the State of Florida.

Section 16. INSOLVENCY

16.01 In the event that either party shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, or become subject to rehabilitation, then, at the option of the other party and immediately upon written notice, this Agreement shall terminate and be of no further force and effect.

Section 17. ENTIRE AGREEMENT

17.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties, whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

Section 18. SEVERABILITY

18.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in Conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 19. NOTICES

19. 01 All notices or other communications required by this Agreement shall be in writing and deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses unless otherwise specified herein:

Section 20. RESTRICTIONS TO PUBLIC ACCESS TO PROJECT PLANS

20.01 The CORPORATION shall be advised that public access to project plans is now restricted, and plans are no longer subject to public records requests, as per Florida Statute F.S.119.07(3)(ee) which states:

"(ee) Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency as defined in s. 119.011 are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or owned or operated by an agency before, on, or after the effective date of this act. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or upon showing of good cause before a court of competent jurisdiction. The entities or persons receiving such information shall maintain the exempt status of the information. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2007, unless reviewed and re-enacted by the Legislature."

Section 21 CHANGES IN SERVICES

21.01 Changes in Services of the CORPORATION, including services required of the CORPORATION'S consultants, may be accomplished after execution of the Memorandum of Understanding or Scope of Services letter, without invalidating the Memorandum of Understanding or Scope of Services letter, if mutually agreed in writing, if required by circumstances beyond the CORPORATION'S control, or if the CORPORATION'S services are affected as described as described below. In the absence of a mutual agreement in writing, the CORPORATION shall notify the TOWN prior to providing such services. If the TOWN deems that all or a part of such Change in Services is not required, the TOWN shall give prompt written notice to the CORPORATION, and the CORPORATION shall have no obligation to provide those services. Except for a change due to the fault of the CORPORATION and his / her consultants, changes in services to the CORPORATION shall entitle the CORPORATION to an adjustment in compensation. If any of the following circumstances affect the CORPORATION'S services for the project, the CORPORATION shall be entitled to an appropriate adjustment in the CORPORATION'S schedule and compensation:

- (a). change in the instructions or approvals given by the TOWN that necessitate revisions in Instruments of Service;
- (b) enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- (c) decisions of the TOWN rendered in conflict with previously reviewed and approved work;
- (d) significant changes in the project including, but not limited to, size, quality, complexity, the TOWN'S schedule or budget, or procurement method;

(e) failure of performance on the part of the TOWN or the TOWN'S consultants or contractors.

TOWN: Procurement Manager
Town of Davie
6591 Orange Drive
Davie, Florida 33314

CORPORATION: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above, in two (2) counterparts, each of which shall without proof or accounting for the other counterpart be deemed an original Contract.

Witness:

Corporation

BY

Title

Date: _____

ATTEST:

TOWN OF DAVIE, a Florida
Municipal Corporation

Russell Muniz
Town Clerk

Tom Truex
Mayor

(Seal)

APPROVED AS TO FORM AND
CORRECTNESS:

Chris Kovanes
Interim Town Administrator

Monroe Kiar
Town Attorney

DATE: _____